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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 FINJAN LLC,
14 Plaintiff,
15 v.
16 PALO ALTO NETWORKS, INC.,
17 Defendant.
18

Case No. 3:14-CV-04908-RS

**ADMINISTRATIVE MOTION TO
FILE UNDER SEAL PORTIONS
OF EXHIBITS SUPPORTING
DEFENDANT PALO ALTO
NETWORKS INC.'S MOTION TO
EXCLUDE TESTIMONY OF DRS.
ANGELOS KEROMYTIS AND
ROBERT MANESS**

Courtroom: 3, 17th Floor
Judge: Honorable Richard Seeborg

1 In accordance with Civil Local Rules 7-11 and 79-5, Defendant Palo Alto Networks, Inc.
 2 (“PAN”) submits this Motion for an order to file under seal the highlighted portions of exhibits
 3 supporting PAN’s Motion to Exclude the Testimony of Drs. Angelos Keromytis and Robert
 4 Maness (“Motion”).

5 I. LEGAL STANDARD

6 Courts generally apply a “compelling reasons” standard when considering motions to seal
 7 documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting
 8 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). Records attached to
 9 nondispositive motions, however, “must meet the lower ‘good cause’ standard of Rule 26(c) of
 10 the Federal Rules of Civil Procedure, as such records ‘are often unrelated, or only tangentially
 11 related, to the underlying cause of action.’” *Exeltis USA Inc. v. First Databank, Inc.*, No. 17-CV-
 12 04810-HSG, 2020 WL 2838812, at *1 (N.D. Cal. June 1, 2020) (quoting *Kamakana*, 447 F.3d at
 13 1179-80). Thus, Courts in this District have applied the lower good cause standard for documents
 14 related to a party’s *Daubert* motion. *See, e.g., id.* at *2.

15 Courts have found that there are compelling reasons to seal “sources of business
 16 information that might harm a litigant’s competitive standing.” *Ctr. for Auto Safety v. Chrysler*
 17 *Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (internal quotations omitted); *In re Elec. Arts*,
 18 298 F. App’x. 568, 569 (9th Cir. 2008).

19 II. DISCUSSION

20 PAN seeks to seal portions of two exhibits submitted with its Motion to Exclude
 21 Testimony of Drs. Angelos Keromytis and Robert Maness. Because the materials are being
 22 submitted with a *Daubert* motion, PAN need only show “good cause” to seal the requested
 23 materials. *Exeltis*, 2020 WL 2838812, at *2. Nevertheless, as shown below, there are
 24 “compelling reasons” to grant PAN’s request.

25 A. PAN’s Confidential Sales Information

26 PAN seeks to seal highlighted portions of Exhibit 6 to the Declaration of Kyle W.K.
 27 Mooney in support of its PAN’s Motion to Exclude Testimony of Drs. Angelos Keromytis and
 28 Robert Maness (“Mooney Decl.”) that contain confidential sales information, the disclosure of

1 which would harm PAN's competitive standing. These proposed redactions occur on pages 4, 5,
2 7, 10, 12, 16, 24, 64, 65, 189, 197, 200, 201 and Exs. A, 1-4, 5B, 8A, 8B, 10A-O, 11 of Mooney
3 Decl. Exhibit 6.

4 Courts in this District routinely grant motions to seal portions of documents containing
5 sales information. *Asia Vital Components Co. v. Asetek Danmark A/S*, No. 16-CV-07160-JST,
6 2019 WL 13423737, at *2 (N.D. Cal. Jan. 30, 2019) (granting a motion to seal sales data and
7 finding that "compelling reasons exist because disclosure of this information would harm
8 Asetek's competitive standing."); *Murphy v. Kavo Am. Corp.*, No. CV 11 0410 YGR, 2012 WL
9 1497489, at *2 (N.D. Cal. Apr. 27, 2012) (granting a motion to seal an exhibit containing
10 sensitive "sales data"); *Williams v. Apple, Inc.*, No. 19-CV-04700-LHK, 2021 WL 2476916, at *3
11 (N.D. Cal. June 17, 2021) (granting motion to seal product's "userbase, costs, revenues, gross
12 margins, and market research data" under compelling reasons standard).

13 Here, PAN seeks to seal confidential information related to PAN's sales of the accused
14 products. This information includes absolute and relative sales revenues for the accused
15 products; figures from which those revenues can be calculated¹; and data about PAN's sales,
16 including the frequency with which certain products are sold together. (Mooney Decl. ¶ 4.) PAN
17 has not publicly disclosed this information. (*Id.*) Public disclosure of this confidential
18 information would help PAN's competitors shape their business decisions, thereby harming
19 PAN's competitive standing in the cybersecurity industry. (*Id.*) For example, a competitor could
20 use information regarding revenues for specific products to determine whether PAN could expect
21 sufficient returns to cover its costs for a given product and whether it could undercut PAN's
22 pricing. (*Id.*) A competitor could also gain a competitive advantage over PAN by using PAN's
23 data regarding sales of product combinations to develop products that compete with PAN while
24 avoiding the costs PAN expended in developing its own product offerings. (*Id.*) The
25 confidentiality interests of PAN therefore outweigh the right of public access to the record, as a
26

27 ¹ This includes Finjan's proposed royalty calculations, which are derived by multiplying
28 revenues for the accused products by royalty rate.

1 substantial probability exists that PAN's confidentiality interests will be prejudiced if the
2 information is made public.

3 PAN seeks to seal limited redactions of only information that would allow others to gain
4 access to PAN's confidential sales data. Thus, the proposed sealing is narrowly tailored, and no
5 less restrictive means exist to protect PAN's overriding confidential business interests.

6 **B. PAN's Marketing Strategy**

7 PAN seeks to seal highlighted portions of Exhibit 6 to the Mooney Declaration that
8 contain descriptions of PAN's marketing strategy regarding the accused products. These
9 proposed redactions occur on pages 58 and 59 of Mooney Decl. Exhibit 6.

10 Courts in this Circuit routinely grant motions to seal confidential information concerning
11 marketing strategy. *See Jam Cellars, Inc. v. Wine Grp. LLC*, No. 19-CV-01878-HSG, 2020 WL
12 5576346, at *2 (N.D. Cal. Sept. 17, 2020) (granting motion to seal information regarding the
13 parties' "marketing and competitive strategy"); *Algarin v. Maybelline, LLC*, No. 12-CV-3000-
14 AJB-DHB, 2014 WL 690410, at *3 (S.D. Cal. Feb. 21, 2014) (finding compelling reasons to seal
15 where "confidential business material, marketing strategies, product development plans could
16 result in improper use by business competitors").

17 PAN seeks to seal confidential information regarding its marketing strategy. (Mooney
18 Decl. ¶ 5.) There are compelling reasons to seal such information, as disclosure of this
19 information would harm PAN's competitive standing in the cybersecurity industry by, for
20 example, enabling competitors to tailor their own marketing decisions to attempt to undermine
21 PAN's messaging. (*Id.*) The confidentiality interests of PAN therefore outweigh the right of
22 public access to the record, as a substantial probability exists that PAN's confidentiality interests
23 will be prejudiced if the information is made public.

24 PAN seeks only limited redactions of PAN's marketing strategy. Thus, the proposed
25 sealing is narrowly tailored, and no less restrictive means exist to protect PAN's overriding
26 confidentiality interests.

27 **C. Terms of PAN's Agreements with Third Parties**

28 PAN seeks to seal highlighted portions in Exhibits 1 and 6 to the Mooney Declaration that

1 describe terms of PAN's agreements with third parties. These proposed redactions occur on
2 pages 255-58 of Mooney Decl. Exhibit 1 and on pages 24, 49-54, and 56 of Mooney Decl.
3 Exhibit 6.

4 Courts in this District, including this Court, have granted motions to seal provisions of
5 agreements and confidential agreements with third parties. *Microsoft Corp. v. Hon Hai Precision*
6 *Indus. Co.*, No. 19-CV-01279-LHK, 2020 WL 8991707, at *3 (N.D. Cal. Feb. 21, 2020) (sealing
7 a licensing agreement given "'pricing terms, royalty rates, and guaranteed minimum payment
8 terms' of patent licensing agreements have been deemed sealable trade secrets."); *Pace Anti-*
9 *Piracy, Inc. v. Inside Secure*, No. 17-CV-06744-BLF, 2018 WL 10517182, at *2 (N.D. Cal. Jan.
10 8, 2018) (finding compelling reasons to redact all designated references to a licensing agreement);
11 *Synchronoss Techs., Inc. v. Dropbox Inc.*, No. 16-CV-00119-HSG, 2020 WL 759528, at *5 (N.D.
12 Cal. Feb. 14, 2020) (granting motion to seal "confidential agreements with third parties").

13 PAN seeks to seal confidential information regarding its agreements with third parties.
14 The terms of these agreements that PAN seeks to seal contain highly confidential information of
15 PAN and the other party involved in the agreement, including pricing terms, the obligations of the
16 parties, the circumstances of the agreements, and the third party's identity. (Mooney Decl. ¶ 6.)
17 PAN has not publicly disclosed the terms of these agreements. (*Id.*) There are compelling
18 reasons to seal this information because disclosure of this highly confidential information would
19 allow PAN's competitors to uncover not only PAN's proprietary information, but that of entities
20 not party to the case and unable to otherwise protect their own confidential information. (*Id.*)
21 Disclosure of this information would harm PAN's competitive standing by revealing the pricing
22 terms and obligations to which it agreed and the circumstances of the agreement, which would
23 reveal PAN's negotiating strategies, thus hampering its ability to negotiate future agreements.
24 (*Id.*) It would also reveal the parties with which PAN has made agreements, which could harm
25 PAN's ability to negotiate with competitors to those parties. (*Id.*) The confidentiality interests of
26 PAN therefore outweigh the right of public access to the record, as a substantial probability exists
27 that PAN's confidentiality interests will be prejudiced if the information is made public. (*Id.*)

28 PAN seeks only limited redactions of specific terms in PAN's licensing agreements.

Thus, the proposed sealing is narrowly tailored, and no less restrictive means exist to protect PAN's overriding confidentiality interests.

III. CONCLUSION

PAN's request is "narrowly tailored to seek sealing only of sealable material," in accordance with Civil Local Rule 79-5(b) and Section 14.4 of the Stipulated Protective Order (Dkt. No. 110).

Accordingly, PAN requests that the Court grant its Administrative Motion to Seal.

Dated: September 11, 2024

/s/ Kyle W.K. Mooney

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